proceedings.

This court has stated that the Bill of Rights was designed to protect the citizens from the very efficiency and convince that, while making a politician look good, also serves to erode the constitutional protections. *Stanley v.Illinois*, 405 US 645 (1972).

In *Stanley*, the court dealt with the issue of child dependency and the need by the state to act in an effective and efficient manner. The court held that the constitution recognizes higher values then speed and efficiency and the concern for such matters is one of the items that the constitution protects its citizens from.*Id* at *656*.

To allow administrative convenience to rule the day is to place a document as sacred as the constitution on the same level as a procedural handbook; something to look at for guidance, but not controlling. The court held long ago that when the reading and interpretation of the constitution are at stake, the "tiresome, but never the less vital" task is required. *Reid v. Covert*,*354* U.S.1 (1957).

Perhaps it was best restated by Mr. Justice Stevens in the dissent in *Reno v. Floes*, 507 U.S. 292, 345 (1993) citing *Stanley that*," administrative inconvenience is a thoroughly inadequate basis for the deprivation of core constitutional rights". That is exactly what we have here. The Commonwealth, in an exercise of efficiency and convenience, went the extra mile to please the victims and district attorney. However, this was done at an incredibly high cost: the constitutional protections of the 6th amendment afforded the defendants in this action.

Petitioner submits that the panel of the Superior Court that considered this case misapplied the Speedy Trial Clause of the 6th amendment. In addition, the PA Supreme Court failed to address the issue, thus resulting in inconsistency and confusion on the speedy trial issue in Pennsylvania.

CONCLUSION

For the above stated reasons, the Petitioner, and the co defendants, respectfully requests that this Honorable Court grant the Writ of Certiorari.

Respectfully submitted,

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Supreme Court, U.S.
FILED

05-652 SEP 8 - 2005

OFFICE OF THE CLERK

No. 05-

In the
SUPREME COURT of the UNITED STATES

Jeremiah Lee Irwin

Petitioner,

vs.

Commonwealth of Pennsylvania

Respondent,

On Petition for Allowance of Appeal
to the Supreme Court of the Commonwealth of Pennsylvania

APPENDIXES TO THE PETITION FOR WRIT OF CERTIORARI

John R. Parroccini, Esquire
Attorney for Petitioner

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Warren, PA 16365
(814) 728-3435

Dated: September 8, 2005

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA
No. 62 WAL 2005
Respondent
Petition for Allowance of Appeal
from the Order of the Superior Court
V.
JEREMIAH LEE IRWIN
Petitioner

ORDER

PER CURIAM

AND NOW, this 10th day of June 2005, the Petition for Allowance of Appeal is hereby **DENIED**.

A True Copy John A. Vaskov
As of: June 10, 2005
Attest:
Deputy Prothonotary
Supreme Court of Pennsylvania

Appendix A

NON-PRECEDENTIAL DECISION
SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,
Appellant

IN THE SUPERIOR COURT OF PENNSYLVANIA

v.

KEITH WAYNE KEEFER,
Appellee
No. 1670 WDA 2003

Appeal from the Order Entered June 27, 2003, in the Court of Common Pleas of Warren County, Criminal Division, at No. 145 of 2003.

COMMONWEALTH OF PENNSYLVANIA,
IN THE SUPERIOR COURT OF PENNSYLVANIA
No. 1672 WDA 2003
Appellant

v.

CARRIE L. KLINE-BETTNER,
Appellee

Appeal from the Order Entered June 27, 2003, in the Court of Common Pleas of Warren County, Criminal Division, at No. 200 of 2003.

Appendix B

COMMONWEALTH OF PENNSYLVANIA,
IN THE SUPERIOR COURT OF PENNSYLVANIA
No. 1673 WDA-2003

v.

JESSICA A. MINEARD,
Appellee

Appeal from the Order Entered June 27, 2003, in the Court of Common Pleas of Warren County, Criminal Division, at No. 199 of 2003.

COMMONWEALTH OF PENNSYLVANIA,
IN THE SUPERIOR COURT OF
PENNSYLVANIA
No. 1674 WDA 2003
Appellant

v.

JEREMIAH LEE IRWIN,
Appellee

Appeal from the Order of June 27, 2003, in the Court of Common Pleas of Warren County, Criminal Division, at No. 118 of 2003.

BEFORE: JOYCE, BENDER AND BOWES, JJ.

MEMORANDUM: FILED: January 21, 2005

In these appeals, the Commonwealth contends that the trial court erroneously concluded that it had violated the dictates of Pa.R.Crim.P. 600. We find merit in that position, reverse, and remand.[1] The criminal complaints were filed in these matters on May 28, 2002; six defendants were involved in the charges. Keith Keefer, Jeremiah L. Irwin, Jessica Mineard, and Carrie L. Kline-Bettner (collectively Appellees) presently are involved in this appeal. The other two defendants, Aaron Anzio and David Meeder, did not file motions to dismiss based on Rule 600 at the time of the trial court's decision in these four appeals.

The charges arose out of a string of campground burglaries in the Althom area from Friday, August 17, 2001, to Sunday, August 19, 2001. The six defendants were staying at a camp in the area at that time. In the complaints, the Commonwealth alleged that the four male defendants entered the camps and committed the burglaries.. Some of the stolen goods were recovered in the possession of Ms. Kline-Bettner and Ms. Mineard, who were charged with receiving stolen property. Mr. Keefer and Mr. Irwin were charged with twenty-seven different burglaries and related offenses.

Appellees were not jailed, and the mechanical rundate for Rule 600 purposes was May 28, 2003. A preliminary hearing was scheduled for January 27, 2003, but was continued at the Commonwealth's request and over Appellees' objections. On May 27, 2003, the trial court granted a contested Commonwealth motion to consolidate the criminal actions. On June 4, 2003, seven days after the mechanical rundate had expired, the first motion to dismiss for a Rule 600 violation was filed by Mr. Keefer. Two days later, the Commonwealth filed a motion for extension of time under the rule, which was denied on June 20, 2003. On June 20,

[1] This appeal involves four separate criminal actions with different defendants; however, the cases all involve the same underlying criminal events. In addition, there was a single Rule 600 hearing for the cases, and the issues presented on appeal are the same. Thus, we will resolve all of the appeals in one adjudication.

2003, the trial court held a hearing, at which time the following facts were revealed.

Pennsylvania State Trooper Kenneth Neiswonger testified about police efforts to locate Appellees for purposes of serving the criminal complaints. On July 12, 2002, Trooper Neiswonger attempted to "contact [Appellees] by telephone and was unable to." N.T., 6/20/03, at 6. Trooper Neiswonger telephoned the Monaca Police Department and informed them that he was seeking Appellee Keefer, Appellee Irwin, and Mr. Anzio. Monaca police went to Mr. Anzio's residence on one occasion but did not find him, and nothing further was done. On November 6, 2002, Appellees' names were entered in the National Crime Information Center, a computer facility where all active warrants are stored. On November 20, 2002, Appellee Irwin was arrested by a Monaca policeman, and on November 27, 2002, Appellee Mineard was arrested. Appellee Kline-Bettner and Appellee Keefer voluntarily relinquished themselves to authorities when they appeared at a preliminary hearing which had been scheduled for all six defendants on December 4, 2002, but which did not proceed.[2] Trooper Neiswonger admittedly had addresses for all Appellees and offered no explanation for his failure to locate and serve them.

Assistant District Attorney Elizabeth A. Feronti testified that she was initially assigned the six criminal cases. She explained that there were twenty-seven different camp burglaries involved, the victims were from different counties, and each victim had his own criminal complaint. Therefore, "to bring each individual defendant on each individual complaint for each victim, there would have been well over a hundred preliminary hearings, if [the Commonwealth] would have done each one individually." Id. at 26. In the interest of judicial economy, Ms. Feronti wanted one preliminary hearing for all defendants on all twenty-seven burglaries.

[2] It is unclear who was present and what transpired at this original preliminary hearing with two exceptions. Appellee Irwin asked for a continuance either at the request of his attorney or because he was not represented, and Mr. Anzio was present but the preliminary hearing did not proceed as to him for unknown reasons.

Ms. Feronti sought to determine whether all six defendants had secured legal representation for the hearing so that she would not have to gather the twenty-seven victims as well as additional witnesses more than once. She was informed by the court administrator that the defendants all had applied for representation through the public defender's office, thereby creating conflicts. Ms. Feronti wrote to the district justice asking for a meeting among herself, the district justice, the defendants, and their counsel. Ms. Feronti suggested the appointment of stand-by counsel for the unrepresented defendants; she further requested a stipulation that the investigating officer could present the victims' testimony by means of hearsay.[3] A copy of the letter was sent to Appellees and to the public defender's office. At the time, only Mr. Irwin was represented by the public defender's office.

A conference with the district justice was held on January 23, 2003; two defense counsel were present. No stand-by counsel were appointed, but defense counsel who were present agreed to stipulate to the value of the stolen items.

On January 27, 2003, District Justice Cynthia Lindemuth presided over the preliminary hearing. The public defender's office represented Mr. Irwin and Mr. Keefer; Ms. Mineard and Ms. Kline-Bettner retained private counsel. The attorney for Mr. Keefer recognized the conflict problem inherent in his office representing two defendants and informed Ms. Feronti that he could not represent Mr. Keefer. When Ms. Feronti advised Judge Lindemuth that one of the defendants was not represented, the hearing was rescheduled over the objection of the three represented defendants. The case was rescheduled for March 19, 2003, the first date for which everyone was available. See id. at 40. At the Rule 600 hearing, the Commonwealth introduced the applications of all five defendants for representation through the public defender's office.[4]

[3] See Commonwealth v. Troop, 571 A. 2d 1084 (Pa. Super. 1990) (hearsay evidence is admissible at a preliminary hearing).

[4] It appears from the record that Mr. Meeder may not have been located.

Judge Lindemuth also testified at the Rule 600 hearing. She indicated that Appellee Irwin requested that his December 2002 preliminary hearing be rescheduled either at the request of his counsel or because he did not have counsel.[5] Judge Lindemuth confirmed that she granted the Commonwealth a continuance on January 27, 2003, based upon the public defender's withdrawal of representation of Appellee Keefer. She stated clearly that it was standard practice to grant a continuance when a defendant appeared without representation. She also verified that the preliminary hearing was rescheduled for March 19, 2003, the next available date that could accommodate the schedules of all defendants and their counsel. Id. at 96. All Appellees were bound over on all charges at that hearing.

The Commonwealth's final witness was Joyce Carnahan, the office manager for the district attorney's office responsible for scheduling. A copy of the court calendar was introduced. The Commonwealth established that when a case was entered into the system after the preliminary hearing, as required by local rule, it was scheduled for arraignment, settlement conference, call of the calendar, and jury selection. Once Appellees' preliminary hearing was held and they were bound over, it took Ms. Carnahan approximately five days to place their cases in the system. Their cases were scheduled for an April 3, 2003 arraignment, June 16, 2003 settlement conference, June 30, 2003 calendar call, and July 14, 2003 jury selection. The arraignment date was the first available arraignment date on the court calendar after March 19, 2003. From that date, the first available trial term was in July. Furthermore, June 16, 2003, was the first available settlement conference date on the court calendar after the April 3, 2003 arraignment. The court calendar established that the first settlement conference scheduled after April 3, 2003, was June 16, 2003; June 30, 2003,

[5] Since Appellee Irwin asked for a continuance on December 4, 2002 and since his preliminary hearing was rescheduled for January 27, 2002, that time should have been excluded as to him. Pa.R.Crim.P. 600 (c)(3)(a). When that fifty-four-day period is excluded for Appellee Irwin, it is unclear that no Rule 600 violation occurred as to him.

was the first scheduled criminal call on the court calendar after the June 16, 2003 conference day; and July 14, 2003 was the first scheduled criminal jury selection on the court calendar after the June 30, 2003 call. The Commonwealth introduced into evidence Warren County rule number 300, which sets forth the mandatory scheduling procedure imposed in that county and which provides for the aforementioned scheduling order.

The trial court concluded that none of this time was excludable for purposes of Pa.R.Crim.P. 600[6] and dismissed the charges. These Commonwealth appeals followed. Our standard and scope of review is limited:

Our standard of review in a Rule 600 issue is whether the trial court abused its discretion. *Commonwealth v. Matis,* 551 Pa. 220, 227, 710 A.2d 12, 15 (1998). Our scope of review when determining the propriety of the trial court is limited to the evidence in the record, the trial court's Rule 600 evidentiary hearing, and the trial court's findings. *Commonwealth v. Hill,* 558 Pa. 238, 244, 736 A.2d 578, 581 (1999) (citing *Matis,* 551 Pa. at 227, 710 A.2d at 15). We must also view the facts in the light most favorable to the prevailing party, in this case, Appellee. *Commonwealth v. Edwards,* 528 Pa. 103, 105, 595 A.2d 52, 53 (1988).*Commonwealth v. Lewis,* 804 A.2d 671, 673 (Pa.Super. 2002).

Since none of the Appellees was jailed, Pa.R.Crim.P. 600(A)(3) applies: "Trial in a court case in which a written complaint is filed against the defendant, when the defendant is at liberty on bail, shall commence no later than 365 days from the date on which the complaint is filed." The mechanical run date under Rule 600 for these Appellees thus became May 28, 2003. Appellees' trial was not scheduled until July 14, 2003, six weeks after the run date.

Certain periods are excludable from the rule 600 time calculation:

> (C) In determining the period for commencement of trial, there shall be excluded there from:

[6] Until April 1, 2001, Rule 600 was numbered Pa. R. Crim. P. 1100

(1) the period of time between the filing of the written complaint and the defendant's arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence;

(2) any period of time for which the defendant expressly waives Rule 600;

(3) such period of delay at any stage of the proceedings as results from:

(a) the unavailability of the defendant or the defendant's attorney;

(b) any continuance granted at the request of the defendant or the defendant's attorney.

Pa. R.Crim. P. 600(C).

The Commonwealth first argues that certain days were excludable under Rule (C)(1), which governs the time between the filing of the complaint and the arrests, because the defendants' whereabouts were unknown and police exercised due diligence in attempting to discover their whereabouts. We cannot agree with this assertion. Rule 600 mandates that reasonable efforts be made to locate a defendant. *Commonwealth v. McDermott,* 421 A.2d 851 (Pa.Super. 1980); *Commonwealth v, Webb,* 420 A.2d 703 (Pa.Super. 1980). In these cases, Trooper Neiswonger conceded that he knew each of Appellees' addresses and yet never went to their homes. Trooper Neiswonger made one telephone call and entered Appellees' names in the computer. Local police went to the home of one defendant who is not involved in this appeal. The record establishes that no attempts were made to find these four Appellees, and therefore, we agree with the trial court's assessment that reasonable efforts to locate Appellees were not made.

Similarly, we cannot agree with the Commonwealth's contention that the period between the preliminary hearing scheduled on January 27, 2003, and the March 19, 2003 rescheduled hearing should be excluded. This position is premised upon the

Commonwealth's belief that the time period in which it attempted to resolve the problems created by the fact that all defendants sought representation through the defender's office was excludable. While this contention does have merit in relation to Appellee Keefer,[7] who was not represented, the remaining defendants were represented and ready to proceed. Excludable time is strictly defined by Rule 600 and does not permit delay caused by another defendant to be excluded. *Commonwealth v. Hill*, 558 Pa. 238, 736 A.2d 578 (1999); see also *Commonwealth v. Aaron*, 804 A.2d 39 (Pa.Super. 2002) (judicial delay is not excludable time).

The Commonwealth argues in the alternative that it exercised due diligence and that the circumstances that caused the cases to be delayed were beyond its control. This argument is an invocation of Pa.R.Crim.P. 600(G), and we agree that this case calls for application of that section of Rule 600. Pa.R.Crim.P. 600(G) provides, "If the court, upon hearing, shall determine that the Commonwealth exercised due diligence and that the circumstances occasioning the postponement were beyond the control of the Commonwealth, the motion to dismiss shall be denied and the case shall be listed for trial on a date certain."

Thus, even where, as here, there has been a violation of Rule 600, dismissal is not warranted where the Commonwealth exercised due diligence and the reasons the case was delayed were beyond its control. We recently had occasion to analyze this section in the en banc opinion in *Commonwealth v. Hunt*, 858 A.2d 1234 (Pa.Super. 2004). In that case, we delineated the difference between excludable time and excusable delay.[8] "'Excusable delay'" is not expressly defined in Rule 600, but the legal construct takes into account delays which occur as a result of circumstances

[7] Excludable time as to appellee Keefer is not sufficient to result in the scheduling of his trial within the rundate. However, it does reduce the amount of delay to twenty four days.

[8] While the trial court correctly concluded that there was no excludable time in this case, it did not analyze separately the excusable time at issue in this case. The court did not have the benefit of Hunt when it rendered its decision.

beyond the Commonwealth's control and despite its due diligence. Pa.R.Crim.P. 600(G)." Id. at 1241. When the trial court considers a motion to dismiss under Rule 600, it "must assess whether there is excludable and/or excusable delay." Id. (emphasis added). Thus,

"Even where a violation of Rule 600 has occurred, the motion to dismiss the charges should be denied if the Commonwealth exercised due diligence and 'the circumstances occasioning the postponement were beyond the control of the Commonwealth.' [Commonwealth v. Hill, 558 Pa. 238,] 263, 736 A.2d [578,] 591 [1999].

'Due diligence is a fact-specific concept that must be determined on a case-by-case basis.' Id. at 256, 736 A.2d at 588. 'Due diligence does not require perfect vigilance and punctilious care, but rather a showing by the Commonwealth that a reasonable effort has been put forth. *Id.*'

Id. 1241-1242 (emphasis in original);

see also Commonwealth v. Wentzel, 641 A.2d 1207 (Pa.Super. 1994).

Furthermore, in determining whether a Rule 600 violation has occurred, we must consider the Rule's dual purposes, which include the protection of the accused's speedy trial rights as well as the protection of society. "[T]he administrative mandate of Rule 600 was not designed to insulate the criminally accused from good faith prosecution delayed through no fault of the Commonwealth." Hunt, supra at 1239 (quoting Aaron, supra at 42).

> So long as there has been no misconduct on the part of the Commonwealth in an effort to evade the fundamental speedy trial rights of an accused, Rule 600 must be construed in a manner consistent with society's right to punish and deter crime. In considering these matters, courts must carefully factor into the ultimate equation not only the prerogatives of the individual accused, but the collective right of the community to vigorous law enforcement as well. Strained and illogical judicial construction adds nothing to our search for justice, but